SUPREME COURT, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-474

STATE BOARD OF ELECTIONS FOR THE STATE OF ILLINOIS, and MICHAEL L. LAVELLE, DONALD W. ADAMS, FRANKLIN W. LUNDING JR. and WILLIAM L. HARRIS, individually and as members of the State Board of Elections,

Petitioners,

vs.

COMMUNIST PARTY OF ILLINOIS, ISHMAEL FLORY, LORRAINE ASHBY, JOHN LUMPKIN, JAY SCHAFFNER, VALERIE WITZKOWSKI; and THEODORE PEARSON, individually and on behalf of others similarly situated,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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The State Board of Elections for the State of Illinois, and Michael E. Lavelle, Donald W. Adams, Franklin J. Lunding, Jr. and William L. Harris, individually and as members of the State Board of Elections, respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered on June 27, 1975.

OPINION BELOW

The opinion of the Court of Appeals is reported at 518 F. 2d 517 and is included herein as Appendix A. The opinion and order of the United States District Court for the Northern District of Illinois, Eastern Division, is not reported and is included herein as Appendix B. An earlier related interlocutory opinion is reported at 357 F. Supp. 105 and is included herein as Appendix C.

JURISDICTION

The judgment and opinion of the Court of Appeals for the Seventh Circuit was entered on June 27, 1975. The jurisdiction of this court is invoked under Title 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether a State may require a new political party seeking statewide ballot position to organize in more than one concentrated geographical area.

STATUTE INVOLVED

Illinois Election Code, Section 10-2;

Ill. Rev. Stats. 1973, Chap. 46, § 10-2.

"...

A political party which, at the last general election for State and county officers, polled for its candidate for Governor more than 5% of the entire vote cast for Governor, is hereby declared to be an "established political party" as to the State and as to any district or political subdivision thereof.

A political party which, at the last election in any congressional district, legislative district, county, township, school district, park district, municipality or other district or political subdivision of the State, polled more than 5% of the entire vote cast within such congressional district, legislative district, county, township, school district, park district, municipality, or political subdivision of the State, where such district, political subdivision or municipality, as the case may be, has voted as a unit for the election of officers to serve the respective territorial area of such district, political subdivision or municipality, is hereby declared to be an "established political party" within the meaning of this Article as to such district, political subdivision or municipality.

Any group of persons hereafter desiring to form a new political party throughout the State, or in any political subdivision greater than a county and less than the State, shall file with the State Board of Elections a petition, as hereinafter provided; and any such group of persons hereafter desiring to form a new political party, in any county shall file such petition with the county clerk; and any such group of persons hereafter desiring to form a new political party in any municipality or district less than a county shall file

such petition with the clerk or Board of Election Commissioners of such municipality or district, as the case may be. Any such petition for the formation of a new political party throughout the State, or in any such district or political subdivision, as the case may be, shall declare as concisely as may be the intention of the signers thereof to form such new political party in the State, or in such district or political subdivision; shall state in not more than 5 words the name of such new political party; shall contain a complete list of candidates of such party for all offices to be filled in the State, or such district or political subdivision as the case may be, at the next ensuing election then to be held; and, if such new political party shall be formed for the entire State, shall be signed by not less than 25,000 qualified voters: Provided, that no more than 13,000 signatures from the same county may be counted toward the required total of 25,000 signatures. If such new political party shall be formed for any district or political subdivision less than the entire State, such petition shall be signed by qualified voters equaling in number not less than 5% of the number of voters who voted at the next preceding general election in such district or political subdivision in which such district or political subdivision voted as a unit for the election of officers to serve its respective territorial area.

The filing of such petition shall constitute the political group a new political party, for the purpose only of placing upon the ballot at such ensuing election such list of party candidates for offices to be voted for throughout the State, or for offices to be voted for in such district or political subdivision less than the State, as the case may be, under the name of and as the candidates of such new political party.

If, at such ensuing election, the new political party's candidate for Governor shall receive more than 5% of the entire votes cast for Governor, then such new political party shall become an "established political party" as to the State and as to every district or poli-

tical subdivision thereof. If, at such ensuing election, the other candidates of the new political party, or any other candidate or candidates of the new political party shall receive more than 5% of all the votes cast for the office or offices for which they were candidates at such election, in the State, or in any district or political subdivision of the State, as the case may be, then and in that event, such new political party shall become an "established political party" within the State or within such district or political subdivision less than the State, as the case may be, in which such candidate or candidates received more than 5% of the votes cast for the office or offices for which they were candidates. It shall thereafter nominate its candidates for public offices to be filled in the State, or such district or political subdivision of the State, as the case may be, under the provisions of the laws regulating the nomination of candidates of established political parties at primary elections and political party conventions, as now or hereafter in force.

A political party which continues to receive for its candidate for Governor more than 5% of the entire vote cast for Governor, shall remain an "established political party" as to the State and as to every district or political subdivision thereof. But if the political party's candidate for Governor fails to receive more than 5% of the entire vote cast for Governor, or if the political party does not nominate a candidate for Governor, the political party shall remain an "established political party" within the State or within such district or political subdivision less than the State, as the case may be, only so long as, and only in those districts or political subdivisions in which, the candidates of that political party, or any candidate or candidates of that political party, continue to receive more than 5% of all the votes cast for the office or offices for which they were candidates at succeeding general elections within the State or within any district or political subdivision of the State, as the case may be."

STATEMENT OF THE CASE

The Communist Party of Illinois is an unincorporated voluntary association having its principal office in Chicago, Illinois. The Party, and its designated candidates for statewide office, sought recognition as a new statewide political party, and ballot position in the November 5, 1974 general election, pursuant to Section 10-2 of the Illinois Election Code, Ill. Rev. Stats. 1973, Chap. 46, § 10-2.

Although the candidates of the Communist Party of Illinois have appeared on the statewide ballot in prior elections, they have always failed to receive 5% of the votes cast in those elections, and thus do not qualify as an established political party. (See Appendix D and E)

The Illinois Election Code requires a petition for the formation of a new political party throughout the State to contain not less than 25,000 signatures, provided that no more than 13,000 may be counted from one county.

Respondents submitted petitions containing 23,000 signatures from Cook County. Objections were filed to the sufficiency of the nominating petitions, which objections were sustained by the State Board of Elections.

Thereafter, Respondents brought suit in the District Court to declare the Illinois signature distribution provisions of § 10-2 unconstitutional and to enjoin its enforcement. Jurisdiction was alleged under 28 U.S.C. § 1343(3), 1343(4), 2201, 2202 and the First, Fifth and Fourteenth Amendments to the United States Constitution.

A motion for temporary restraining order and preliminary injunction was presented. The trial judge declined to convene a three judge court and entered a preliminary mandatory injunction declaring Section 10-2 of the Illinois

Election Code violative of the equal protection and due process clauses of the Fourteenth Amendment, and directing the Illinois State Board of Elections to certify the names of the Communist Party candidates for the November 5, 1974 Illinois General Election. (Appendix B) On appeal of this order, the Court of Appeals affirmed the District Court.

REASONS FOR GRANTING THE WRIT

The District Court ruled that the Illinois "signature distribution requirement constitutes an arbitrary formula which grants one group greater voting strength than another and discriminates against voters of the most populous county of the State in favor of less populous counties."

The Circuit Court of Appeals affirmed, holding that the "county distribution requirement of section 10-2 of the Illinois Election Code, like its predecessor, 'lacks the equality to which the exercise of political rights is entitled under the Fourteenth Amendment.'"

This conclusion is based upon an overstatement of the reach of prior Supreme Court decisions, and a failure to perceive the real impact of the election law upon voters in Illinois.

The issue is not "one man-one vote" but whether any proposed new statewide political party is a serious one and has risen to the dignity of a statewide ballot position. There is no signature distribution restriction upon ballot position for countywide office. Discussion of statewide candidates and issues is impaired, and the public interest disserved, however, by enabling a flooding of the statewide ballot with local fringe candidates whose election activities and support is limited to a single county enclave. The Election Code, Chap. 46, § 10-2, based on historical experience, serves to screen out the frivolous and nuisance candidacies, and to encourage and promote serious statewide political party activity.

The present signature distribution requirement of the Illinois Election Code must be understood in the context of the litigation which preceded its enactment, and the realities of Illinois politics.

The State is organized into 102 counties. Of these, Cook County is uniquely the most urbanized county, containing approximately 50% of the total State population. The remaining 101 counties, typically referred to as "Downstate", contain the remaining 50% of the population.

Prior to *Moore* v. *Ogilvie*, 394 U.S. 814 (1969), Section 10-2 of the Illinois Election Code, Ill. Rev. Stats. 1957, Chap. 46, § 10-2, required a new statewide political party to obtain at least 200 qualified voters' signatures from each of at least 50 counties, to qualify for a place upon the ballot.

An original challenge to this provision, on Fourteenth Amendment constitutional grounds, was rejected by a three-judge court in *MacDougall* v. *Green*, 80 F. Supp. 725, affirmed 335 U.S. 281, 285, 286, 69 S. Ct. 1 (1948). In *MacDougall* the U.S. Supreme Court observed:

> "The appellants' claim to equitable relief against this ruling is based upon the peculiar distribution of population among Illinois' 102 counties.
>
> • • •
>
> *It is clear that the requirement of two hundred signatures from at least fifty counties gives to the voters of the least populous counties of Illinois the power completely to block the nomination of candidates whose support is confined to geographically limited areas.*
>
> • • •
>
> It is allowable State policy to require that candidates for Statewide office should have support not limited to a concentrated locality.
>
> • • •
>
> It would be strange indeed, and doctrinaire for this court, applying such broad constitutional concepts as

> due process and equal protection of the laws, to deny a State the power to *assure a proper diffusion of political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that latter have practical opportunities for exerting their political weight at the polls not available to the former.* The Constitution—a practical instrument of government—makes no such demands on the States . . ." (Emphasis added)

Twenty-one years later, in *Moore* v. *Ogilvie,* 293 F. Supp. 411, reversed 394 U.S. 814, 89 S. Ct. 1493 (1969), the U.S. Supreme Court restated the issue:

> "It is no answer to the argument under the Equal Protection Clause that this law was designed to require statewide support for launching a new political party rather than support from a few localities. *This law applies a rigid, arbitrary formula to sparsely settled counties and populous counties alike. . . .*" (Emphasis added)

Two justices dissented in the *Moore* case, saying:

> "The Court held in *MacDougall* v. *Green,* 335 U.S. 281, in sustaining the very statutory requirement here at issue that Illinois had pursued an 'allowable state policy [of] require[ing] that candidates for statewide office should have support not limited to a concentrated locality.' Id. at 283. That conclusion seems to me to be no less sound today than it was at the time of the *MacDougall* decision."

Significantly, the majority in the *Moore* case did not say that all signature distribution requirement per se are unconstitutional. To the contrary, the Court recognized that nominating petitions are an "integral part of the state elective system," and that limitations may be imposed if they can "pass muster against charges of discrimination or of abridgement of the right to vote." The majority opinion

noted that "we have said enough to indicate why *MacDougall* v. *Green* is out of line with our recent apportionment cases." 394 U.S. 814 at p. 818.

Thereafter, similar "rigid, arbitrary formula" of other States were also struck down: *Socialist Workers Party* v. *Rockefeller,* 314 F. Supp. 984 (S.D. N.Y., 1970), New York statute requiring at least 50 signatures from each county of the State; *Socialist Labor Party* v. *Rhodes,* 318 F. Supp. 1262 (S.D. Ohio, 1970), an Ohio statute requiring 200 signatures from at least 30 counties; *Socialist Workers Party* v. *Hare,* 304 F. Supp. 534 (E.D. Mich. 1969), a Michigan statute requiring 100 signatures from at least 10 counties; *Baird* v. *Davoren,* 346 F. Supp. 515 (Mass. 1972), a Massachusetts statute requiring signatures from at least three counties.

In response to the *Moore case,* and its progeny, the Illinois General Assembly redrafted the signature provision of the Election Code to eliminate the "rigid, arbitrary formula applicable to sparsely settled counties and populous counties alike", and enacted the present § 10-2:

> "... And, if such new political party shall be formed for the entire state, shall be signed by not less than 25,000 qualified voters: Provided, that no more than 13,000 signatures from the same county may be counted toward the required total of 25,000 signatures."

Communist Party v. *Ogilvie,* 357 F. Supp. 105 (N.D. Ill. 1972) (Appendix C) involves the amended § 10-2, but, unlike the other cases cited by the court below, it was an unappealed interlocutory order. The court majority addressed itself primarily to the loyalty oath issue and recited, in one brief paragraph on the signature distribution requirement, a conclusion to support issuance of a preliminary injuction. No all-inclusive class was established, and the named

Plaintiffs immediately thereafter appeared on the ballot and lost the election. (Appendix E) The issue becoming moot, Plaintiffs failed to ever prosecute their lawsuit to final judgment.

Now, the same tactical situation has reoccurred and the constitutional question has again become one "capable of repetition but evading review." *Southern Pacific Terminal Co.* v. *I.C.C.*, 219 U.S. 498, 515, 31 S Ct. 279, 283 (1911); *Moore* v. *Ogilvie*, 394 U.S 814, 816, 89 S. Ct. 1493, 1494 (1969); *Carroll* v. *President and Commissioners of Princess Anne*, 393 U.S. 175, 178-179, 89 S. Ct. 347, 350, 351 (1968); *United States* v. *W. T. Grant Co.*, 345 U.S. 629, 632-633, 73 S Ct. 894, 897-898 (1953).

In the instant action, the trial court could see no difference between the earlier "rigid, arbitrary formula" cases and the current Illinois situation. This superficial "knee-jerk" response is neither compelling in legal analysis, nor in accord with current pragmatic Supreme Court tests of election laws.

As Mr. Justice White most recently said in *Storer* v. *Brown*, 415 U.S. 724, 730-731, 94 S. Ct. 1274, 1279, 1282 (1974):

> "It has never been suggested that the *Williams-Kramer-Dunn rule* automatically invalidates every substantial restriction on the right to vote or to associate . . . as a practical matter, there must be a substantial regulation of elections . . . if some sort of order, rather than chaos, is to accompany the democratic processes. . . . Decisions in this context, as in others, is very much a 'matter of degree,' Dunn v. Blumstein, supra, 405 U.S., at 348, 92 S. Ct., at 1066, very much a matter of 'consider[ing] the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification.' Williams v. Rhodes, supra, 393

> U.S., at 30, 89 S. Ct. at 10; Dunn v. Blumstein, supra, 405 U.S., at 335, 92 S. Ct. at 999. What the result of this process will be in any specific case may be very difficult to predict with great assurance."

In *Communist Party* v. *Austin,* 362 F. Supp. 27, 30 (E.D. Mich. 1973), the court noted that "[a] state is not required to devise a statutory scheme for access to the ballot that provides perfect equality under all contingencies, at all times."

Rather, "particular circumstances and needs . . . may sometimes justify departures from strict equality." *Abate* v. *Mundt,* 403 U.S. 183, 186, 91 S. Ct. 1904, 1907 (1971); *Reynolds* v. *Sims,* 300 U.S. 533, 578, 84 S. Ct. 1362, 1390 (1964).

In *American Party of Texas* v. *White,* 415 U.S. 767, 781-782, 94 S. Ct. 1296, 1306 (1974), the Supreme Court said:

> "If claiming an equal protection violation, the Appellants' burden was to demonstrate in the first instance a *discrimination against them of some substance.* Statutes create many classifications which do not deny equal protection; *it is only 'invidious discrimination' which offends the constitution."* (Emphasis added)

The court said in *Gaffney* v. *Cummins,* 412 U.S. 735, 93 S. Ct. 2321, 2325, 2329, 2331 (1973):

> "We think that appellees' showing of numerical deviations from population equality among the Senate and House districts in this case failed to make out a prima facie violation of the Equal Protection Clause of the Fourteenth Amendment . . .
>
> * * *
>
> Fair and effective representation may be destroyed by gross population variations among districts, but it is apparent that such representation does not depend

> solely on mathematical equality among district populations. There are other relevant factors to be taken into account and other important interests that States may legitimately be mindful of [Citations omitted]
>
> * * *
>
> We are quite unconvinced that the reapportionment plan . . . violated the Fourteenth Amendment because it attempted to reflect the relative strength of the parties in locating and defining election districts. It would be idle, we think, to contend that any political consideration taken into account in fashioning a reapportionment plan is sufficient to invalidate it."

In the case at bar, the trial court did not conduct an evidentiary hearing on the factual allegations of discrimination, or undertake to actually consider, balance and weigh the conflicting public and private interests involved. Most importantly, the trial court made no effort to verify the impact of the "Chicago-Downstate" configuration upon statewide political party activity.

Respondents failed to adduce evidence that Chapter 46, § 10-2 is unreasonable and has a "real and appreciable impact on the exercise of the franchise." There is not a scintilla of evidence in the record that the signature distribution requirement has prevented a legitimate, new statewide political party from obtaining ballot position, nor has there been a showing in any way that voters in the "less populous counties" have thus been given "greater voting strength" than voters in the "most populous county."

Before reaching its conclusion in *Socialist Labor Party* v. *Rhodes*, 318 F. Supp. 1262, 1269 (S.D. Ohio 1970), the trial court first determined that:

> "The changes in Ohio election laws effectuated in the 1948-1952 period dramatically, and adversely, affected the rights of individuals to associate for the

> advancement of political beliefs. They also deprived qualified voters of the right to effectively cast their ballots for candidates other than those running as Democrats or Republicans. From 1952 to date there was not one independent or third party candidate on the Ohio ballot running for a state office.
>
> It is thus clear from the history of Ohio's election laws that since 1952 they have effectively precluded persons in Ohio from exercising their rights to political association outside the Democratic and Republican parties. To justify such a restriction on an important, constitutionally guaranteed right, the state must show a compelling state interest. It has not done so. Everything that has happened in the Ohio electoral process since 1952 suggests that no compelling state interest justifies the perpetration of the present statutory entanglement."

The United States Supreme Court, in dismissing the appeal, 406 U.S. 583, 588, 92 S. Ct. 1716, 1719 (1972) found that "all issues litigated below have become moot except for one" and as to that issue, said:

> "The long and the short of the matter is that we know very little more about the operation of the Ohio affidavit procedure as a result of this lawsuit than we would if a prospective plaintiff who had never set foot in Ohio had simply picked this section of the Ohio election laws out of the statute books and filed a complaint in the District Court setting forth the allegedly offending provisions and requesting an injunction against their enforcement. These plaintiffs may well meet the technical requirement of standing, and they may be parties to a case or controversy, but their case has not given any particularity to the effect on them of Ohio's affidavit requirement."

In the case at bar, the only evidence existing at all is spread in the public records of the election returns (see Appendix D and E) showing consistent failure of Respond-

ents to muster even token statewide support of their party, or to garner a vote total equalling the purported signatures on their nominating petitions (not even in the most populous county).

Respondents state that "of 6,040,627 registered Illinois voters, 2,748,969—45% reside in Cook County." The Election Code, in effect, limits a statewide party from using nominating signatures from the most populous county, i.e. Cook, in excess of 52%, or 6-½% over the population spread.

Thus, a serious statewide political party may utilize localized support, but to obtain statewide ballot position, it is also required to organize itself outside a concentrated local area (and no area is more concentrated that the "Chicago" area).

In electoral politics, it has been the vote effectiveness of downstate voters which is diluted by the demographic realities. Without some regulation, Chicago fringe candidates would have the power to flood the statewide ballot in every election.

Balancing this inequality is the object of the signature distribution requirements of § 10-2. It should be noted that this is the converse of the situation in *Moore* v. *Ogilvie*. Here, it is the defeat of § 10-2 which will operate to further augment "Chicago" voting power at the expense of "downstate" voters, and defeat "one-man-one vote" principles as they come into play in real politics. In practice, Section 10-2 creates "no invidious discrimination which offends the constitution."

As Mr. Justice Douglas recognized in *Dusch* v. *Davis*, 387 U.S. 112, 117, 87 S. Ct. 1554, 1556 (1967).

> "The Seven-Four Plan seems to reflect a detente between urban and rural communities that may be important in resolving the complex problems of the

modern megalopolis in relation to the city, the suburbia and the rural countryside.

The court in *Storer* v. *Brown*, 415 U.S. 724, 730-731, 94 S. Ct. 1282, notes that in regulating the election process the States are not required to use "ineffectual means" to achieve its aims:

> "To conclude otherwise might sacrifice the political stability of the system of the State, *with profound consequence for the entire citizenry, merely in the interest of particular candidates and their supporters having instantaneous access to the ballot.*" (Emphasis added).

Socialist Workers Party v. *Rockefeller*, 314 F. Supp. 984 (1970), cited by the trial court, says of the power of States to regulate ballot access:

> "Of course, *the State is not powerless to fix reasonable standards or requirements for a position on the ballot so that multifarious political associations with little or no popular support do not bemuse the electoral process.*" (Emphasis added)

In *Storer* v. *Brown*, 415 U.S. 724, 730-731, 94 S. Ct. 1274, 1280 (1974), the court goes on to say:

> "Other variables must be considered where qualifications for candidates rather than for voters are at issue.
>
> * * *
>
> Subsequently, in *Bullock* v. *Carter*, 405 U.S. 134, 145, 92 S. Ct. 849, 31 L. Ed. 2d 92 (1972), a unanimous Court said:
>
> 'The Court has recognized that a State has a legitimate interest in regulating the number of candidates on the ballot. Jenness v. Fortson, 403 U.S. at 442, 91 S. Ct. at 1976; Williams v. Rhodes, 393 U.S. at 32, 89 S. Ct. 5 at 11. *In so doing, the State understandably and prop-*

> *erly seeks to prevent the clogging of its election machinery, avoid voter confusion, and assure that the winner is the choice of a majority, or at least a strong plurality, of those voting, without the expense and burden of runoff elections. . . .* Moreover, *a State has an interest, if not a duty, to protect the integrity of its political processes from frivolous or fraudulent candidacies.* Jenness v. Fortson, 403 U.S. at 142, 91 S. Ct. at 1976.
>
> Against this pattern of decision, we have no hesitation in sustaining § 6830(d)." (Emphasis added)

In *Jenness* v. *Fortson,* 403 U.S. at 431, 91 S. Ct. at 1976, the Court also states:

> "The fact is that there are obvious differences in kind between the needs and potentials of a political party with historically established broad support, on the one hand, and a new or small political organization on the other. . . . Sometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike. . . ."

The very principle of distribution rejected by the trial court and the circuit court in the case at bar has been made an essential qualifying condition in the Federal Election Campaign Act Amendments of 1974, P.L. 93-443, Chap. 26, U.S.C. § 9033 (b) (3), which requires a candidate to receive:

> ". . . matching contributions which in the aggregate, exceed $5.000 in contributions *from residents of each of at least 20 states . . .*" (Emphasis added)

See *Buckley* v. *Valeo,* —— Fed. 2nd ——, (D.C.C. 1975), 44 LW 2105.

The objectives of Illinois election law and procedure is very similar to that discussed in *Zautra* v. *Miller,* 348 F. Supp. 847, 850 (D. Utah, 1972):

"The question before this court is whether the Fourteenth Amendment mandates the elimination of even minimal geographical burdens of conceivably discriminatory effect upon the formation of political parties.

* * *

New political parties have been successfully formed in Utah through compliance with the law.

* * *

Plaintiffs have supplied no indication that the Utah law has any real, or appreciable, discriminatory effect upon the franchise in Utah.

Utah law contemplates the establishment of political parties with detailed, statewide organizations. During the first year of operations, the law questioned by plaintiffs contemplates the holding of conventions in at least the minimum ten counties in which signatures were obtained. Utah Code Ann. § 20-3-2(g)(2) (Supp. 1971), set out in note 1, *supra*. After the first year, a new political party must hold organizational conventions in every county in the state. Utah Code Ann. § 20-4-1 (Supp. 1971). Thus the political party qualification requirements rest upon a rational basis: they are an intermediate step adapted to the orderly establishment of a statewide party organization. The requirement of such a statewide organization is a legitimate state purpose so long as it imposes no undue burden on the election process. *See,* Jenness v. Fortson, 403 U.S. 431, 91 S. Ct. 1970, 29 L. Ed. 2d 554 (1971); *cf., supra* note 5.

Traditionally political paries have exerted the greatest of influence upon state and national government. It is not unreasonable for a state to require such parties to provide even the residents of sparsely-settled counties with an opportunity to involve themselves in

party machinery which may ultimately control their state or county policies. In return for a party's commitment to statewide operation, the State of Utah sanctions primary elections for the parties and provides state recognition of party decisions concerning the selection of candidates. *E.g.*, Utah Code Ann. §§ 20-4-1 to 20-4-9 *Supp.* 1971)."

CONCLUSIONS

The existing Illinois signature distribution requirement is a well reasoned enactment by the State legislature, intended and designed to effect equality in the electoral process, and not to impose an invidious discrimination.

Section 10-2 was expressly drafted to "pass muster" under the *Moore* v. *Ogilvie* standard, and to balance and weigh competing interests. It simply requires a new statewide party to organize in more than one county.

Unlike statutes requiring names from multiple counties, however sparse, the least populous Illinois counties do not have the power "completely to block" a nomination. Half the State population does reside in 101 counties.

Section 10-2 does not apply a "rigid, arbitrary formula" but reflects actual population distribution patterns, and assures that residents throughout the State have equal opportunity to be involved in statewide political party activities.

The Illinois statute screens out frivolous candidacies but does not make it "virtually impossible" for a new political party to appear on the statewide ballot, nor does it preclude minorities from access to the ballot.

The Illinois statutes does indeed further the legitimate State interest in "avoiding confusion, deception, and even frustration of the democratic process at the general election" so that "multifarious political associations with little or no popular support do not bemuse the electoral process."

Important Federal questions are raised which should be settled by this Court. For these reasons, Petitioners request that a Writ of Certiorari issue to review the decision of the Seventh Circuit Court of Appeals.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1975

No.

TATE BOARD OF ELECTIONS FOR THE STATE OF ILLINOIS, and MICHAEL E. LAVELLE, DONALD W. ADAMS, FRANKLIN J. LUNDING, JR. and WILLIAM L. HARRIS, individually and as members of the State Board of Elections,

Petitioners,

vs.

HE COMMUNIST PARTY OF ILLINOIS; ISHMAEL FLORY, LORRAINE ASHBY, JOHN LUMPKIN, JAY SCHAFFNER, VALERIE WITZKOWSKI; and THEODORE PEARSON, individually and on behalf of all others similarly situated,

Respondents.

CERTIFICATE OF SERVICE

I, Herbert Lee Caplan, Assistant Illinois Attorney General, a member of the Bar of the Supreme Court of the nited States, and counsel for the Petitioners, hereby certify that I have this 24th day of September, 1975, served hree copies of the foregoing Petition for Writ of Certiorari pon Howard Eglit, Lance Haddix, Roger Baldwin Foundation of A.C.L.U., Inc., 5 South Wabash, Room 1516, Chicago, Illinois 60603 and John J. Abt, 299 Broadway, New ork, New York 10007, by depositing same, first class ostage prepaid, in the United States mail chute at 160 orth LaSalle, Chicago, Illinois. All parties required to be erved have been served.

HERBERT LEE CAPLAN.